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March 14, 2012

Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W., Room 11602  
Washington, D.C. 20570

Re: Pavers & Road Builders District Council  
Case 29-CA-029656

Dear Mr. Heltzer:

Local 175, United Plant & Production Workers, IUJAT (herein Local 175) respectfully files this Request for Review pursuant to Section 102.53 of the National Labor Relations Board's Rules and Regulations, Series 8 on the following grounds:

1. The Regional Director's compliance determination failed to acknowledge that not less than 75 hours per week were lost as a result of the unlawful contracting out of work by the Pavers & Road Builders District Council Benefit Funds, (herein Respondent).
2. Initially the Region indicated that they believed 80 hours a week had been lost; but after taking information from the Respondent the Region changed its view and determined only 60 hours of work were lost by reason of Respondent's actions.
3. The Region never advised Local 175 of the facts forming the basis of its change of position. Apparently Respondent provided information to the Region that the Region did not share with Local 175 such that Local 175 could challenge or counter the information provided.
4. The Region failed to interview all of the affected workers such that it did not obtain from the persons affected by Respondent's unlawful actions their perspective of the facts on loss of work and who did what before the work was unlawfully subcontracted out.
5. The decision of the Region (and of the General Counsel) relies on the proposition that individuals who performed work that supported generally the processing of medical claims (Magnacare Work); but who did not exclusively perform the particular tasks subcontracted, were not eligible for an award of "back pay." The problem with this proposition is that it ignores the fact that persons who may not have exclusively performed the subcontracted work did do it on a regular basis or as part of their overall job; especially since they were cross trained to do so; and that to the extent they did perform the kind of work that was directly related to the processing of medical claims and the tasks subcontracted out they

should have been deemed eligible for some kind of remedy. Excluding them simply because they did not perform that work "exclusively" is inappropriate.

6. The Region failed to hold a hearing such that the workers involved could testify and the evidence presented by all parties, including the Respondent, could become known and subject to challenge. Because Respondent simply says a worker did not do something does not mean they are correct or that their position should simply be accepted.

Local 175 also relies upon the Statements submitted to the General Counsel November 22, 2011 as further support of this Request for Review. Local 175 requests that the matter be returned to the Region for the purpose of holding a hearing to determine what work was lost, who did it, and how many hours of work opportunity were lost as a result of the unlawful contracting out of work.

Respectfully submitted,

  
Eric B. Chaikin, Esq.

Cc: James Paulsen, Regional Director  
Region 29, NLRB  
Two Metro Tech Center, Ste 5100, 5<sup>th</sup> Flr  
Brooklyn, NY 11201

Keith Loscalzo, Business Mgr.  
Pavers & Road Builders District Council  
136-25 37<sup>th</sup> Ave.  
Flushing, NY 11354

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Pavers & Road Builders Dist Coun Funds  
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Flushing, NY 11354

Local 175  
99 Mineola Ave, 1<sup>st</sup> floor  
Roslyn Heights, NY 11577

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November 22, 2011

General Counsel  
National Labor Relations Board  
Attention: Office of Appeals  
1099 14<sup>th</sup> Street, N.W.  
Washington D.C. 20570-0001

Re: Pavers and Road Builders District Council Funds  
(Case No. 29-CA-29656)

Dear Sir:

Local 175, United Plant & Production Workers, the Charging Party in the captioned matter, files this Appeal from a decision of the Regional Director dated November 9, 2011 concerning the Make Whole Remedy ordered by the National Labor Relations Board, as affirmed by the United States Court of Appeals for the Second Circuit. This Appeal asserts that the Regional Director failed to interview all of the bargaining unit workers in the Region's investigation of what should be the make whole remedy and failed to properly calculate the total work opportunity lost. This failure caused the Region to make a faulty decision on who did the work prior to the unlawful subcontracting; the appropriate amount of time it would have taken to complete the work had the work not been subcontracted out; the amount of back pay needed to make the bargaining unit whole; how much total time was lost to the bargaining unit by reason of the unlawful subcontracting out of work and who should share in the award of back pay.

In this regard I am attaching Sworn Statements from actual Bargaining Unit employees who attest to the fact that they did work prior to January 1, 2009 on the subcontracted out work; setting forth what the work performed was; and what were the hours lost. It is the Union's position that these workers should be added to the list of persons determined by the Region to have been assigned and lost said work.

Specifically, Local 175 appeals from the Region's assertion that: "During 2007 Respondent assigned five unit employees, Denise Alioto, Donna Crescenzo, Ying Ying Wong, Elaine Kuper and Frank Fabris to perform the medical claims work that was subcontracted to

Magna Care in 2009.” This statement is contrary to the facts. Although the five named persons did perform Magna Care work in 2007 and 2008 there were others. The attached statements attest to the various tasks performed by other members of the bargaining unit on the subject Magna Care work in 2007 and 2008.

All of the tasks set forth were required to be performed for Magna Care claims to be adequately taken in, processed and completed. Thus, the Region’s determination that in 2008 only Denise Alioto, Donna Crescenzo, Ying Ying Wong and Carmelina Faraci were the only ones who did the Magna Care work is simply wrong.

The position of the Union is that based on how the work was performed by members of the entire bargaining unit, as more fully described in the individual statements, that the Make Whole Remedy should apply also to those additional workers who also did work in 2008 on Magna Care work and who lost work opportunity in 2009 and 2010 as noted in the Statements.

Local 175 also appeals from the analysis that only 44 hours of weekly unit work were necessary to complete the Magna Care work due to the shortfall related to the failure to replace Kuper/Fabris. The Region indicated in its letter that both Kuper and Fabris’ hours were used to calculate the lost time and that the Employer, “Rather than assign{ing} overtime or hir{ing} a new employee, effective January 1, 2009, Respondent would have been required to assign 44 hours of weekly unit work to complete it (the Kuper/Fabris shortfall). The Region indicated that it arrived at the 44 hours of net make up hours by crediting the employer with 16 hours due to Faraci’s return to work part time in 2008. Thus, the Region apparently believed that only a gross amount of 60 hours, (rather than 80), was needed to be made up or was lost to the unit.

Contrary to that belief, the facts show, from the attached statements, that Kuper swears she worked full time, 40 hours each week, performing the work that was ultimately lost to the unit. Frank Fabris’ statement indicates that although he also worked full time 40 hours a week, he actually spent 35 hours each week performing the work that was lost to the unit in 2009. Thus the gross amount of time actually lost to the unit, at a minimum, using the Region’s own method, was 75 hours; not 60, per week.

The above error by the Region changes the calculation of net back pay set forth in the Region’s letter dated November 9, 2011. The Statements provided herewith establishe that other unit workers also lost work since the removal of the Magna Care work reduced by volumes the work that the unit workers would have performed in 2009 and 2010; which would have been overtime or additional hours.

I would note that the Region took information from the Employer in making its analysis of events and facts. The Region did not share that information with the Union and thus, the Union has not had the opportunity to challenge any facts or assertions presented by the Employer to the Region. For instance, the Region states that to clear a backlog created between January 1, 2011 and mid-May, 2011 the Employer “accepted the Charging Party’s proposal that this work be assigned to all eleven (11) unit employees.” The Region went on to say that the four unit employees who performed the work in 2008 trained the seven remaining unit employees to

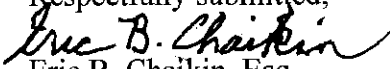
perform the Magna Care medical claims work.

This comment is clearly contrary to the facts. The attached statements clearly demonstrate that the other members of the bargaining unit performed tasks related to completion of the claims by opening the mail, answering calls related to claims, handling complaints from doctors or providers or participants; by preparing, copying and mailing benefit checks; by checking eligibility of claimants, by performing bank and check reconciliations on the actual checks paid out; obtaining eligibility information from employers related to specific participants; taking action to correct errors on claims, finalizing Magna Care reports, completing and filing NYS Pools Department Tax Forms, creating and providing to Bank a Provider's Payment list for verification of payment checks the Bank could honor; reconciliation of checks and bank account information related to Magna Care claims; answering participant questions on status of claims, whether the claim was received or paid; provided information to participants on co-pay requirements related to Magna Care claims; checking Magna Care repricing of claims for accuracy, obtaining information from participants and providers; writing letters requesting information to them, etc. Without the above functions being performed in regards to Magna Care claims they would not have been completed.

All of the above was done by members of the bargaining unit in 2007, 2008 and no training was required to perform those necessary functions. Had the Region advised the Union that they intended to take a position that bargaining unit members had to be trained in 2011 to perform the work, (and that they did not do it previously), the Union would have responded accordingly.

If one uses only the hours lost related to the failure to make up the Kuper/Fabris shortfall and if it were determined that 75 hours rather than 60 had been lost; then there would have been 21 hours at straight time and 38 hours of overtime to be allocated rather than only 28 hours of weekly overtime. And if one considers the fact that virtually everyone in the unit had work removed from their daily routines, (which per the statements adds up to a total of 87 additional hours) then the determination of the Region is clearly inadequate.

The Union's Appeal requests that the matter be returned to the Region for a hearing to be held so that the bargaining unit members may testify to exactly what work they did in 2007 and 2008; what work was removed from them by virtue of the unlawful subcontracting out of work; and for a determination of what the total make whole remedy should be, (principal and interest) and who should share in it.

Respectfully submitted,  
  
Eric B. Chaikin, Esq.  
Counsel to Local 175

cc: Alvin Blyer, Esq., Regional Director  
Pavers and Road Builders District Council, Attention Joseph Montelle  
Andrew A. Gorlick, Esq.  
Scott P. Trivella, Esq.  
Benjamin A. Karfunkel, Esq.

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF Mane Mossa.

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 27 years and was so employed for the years 2007/2008/2009/2010/2011.

2. My work hours during the time period between 2007 and 2011 were:

Days: 3 Hours: 24

3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

answering calls related to claims, handling complaints from providers, handling complaints from members on behalf checks not received, mailing of checks and all returned checks, all adjustments on payments (refunds & voids). Preparing all information on checks and amounts for bank file ~~for~~ bank reconciliation on all claims, filing claims, filing and preparing NYS Pools Dept. Tax Forms

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 89 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.
5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.
6. I was not (~~was~~) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

Marie Massa

Name Marie Massa

Sworn to before me this 21<sup>st</sup> day of November, 2011.

Eric B. Chaikin

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014



BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF CAROL A. COSARES

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 12.7 years and was so employed for the years 2007/2008/2009/2010/2011.

2. My work hours during the time period between 2007 and 2011 were:

Days: 5 days a week Hours: 40 hours  
8:00 - to 4:00 per week

3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

I had a helpful hand in every function,  
start to finish listed <sup>(3)</sup> with the exception  
of (1) enter claims, (2) no check reconciliations,  
and (3) no printing of checks

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4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 15 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.

5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.

6. I was not (~~I was~~) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

Carol A Cosares

Carol A. Cosares

Name

Sworn to before me this 21<sup>st</sup> day of November, 2011.

Eric B. Chaikin

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF DINA FABRIS

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 14.1 years and was so employed for the years 2007/2008/2009/2010/2011.
2. My work hours during the time period between 2007 and 2011 were:  
Days: Mon - Fri Hours: 8-4 (40)
3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

answered phones from providers / members w/ complaints  
status of claims; printed, filed checks, called contractors  
for hours to pay claims, filed.

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 15 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.

5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.

6. I was not (~~I was~~) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

Dina A. Fabris  
Name Dina A. Fabris

Sworn to before me this 21 day of November, 2011.

Eric B. Chaikin

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF

*Cynthia Wong*  
*NOV 21, 2011*

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 17 years and was so employed for the years 2007/2008/2009/2010/2011.

2. My work hours during the time period between 2007 and 2011 were:

Days: 5 Hours: 40 hours.  
*Monday - Friday*  
*8:00 - 4:00 p.m.*

3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

Taking action to correct errors, contacting doctors, providers  
mailing checks, answer phones

Finalize Magnacare Report and Confirm figures.

Send provider's payment list to the bank for payment verification.

Manage Bank Transfer

performing reconciliation of bank accounts

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 7 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.
5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.
6. I was not (~~I was~~) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

Name

Cynthia Wong  
CYNTHIA WONG

Sworn to before me this 21<sup>st</sup> day of November, 2011.

Eric B. Chaikin

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF JOAN PETROCELLI

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 16 years and was so employed for the years 2007/2008/2009/2010/2011.
2. My work hours during the time period between 2007 and 2011 were:  
Days: Monday thru Friday Hours: 40
3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

Attended to members questions at office - on the phone whether claim was received and paid. Answered questions about co-pay, out-of-network, pre-certification and other related info, for members and providers. Also, when members fell out of benefit and they couldn't go to doctors or bills were not being paid, I secured hours for them either through paystubs or calling Employers for hours and entering hours, therefore, they were in benefit and could go to doctors.

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 10 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.
5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.
6. I was not (~~was~~) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

Joan Petrocelli

Name

JOAN PETROCELLI

Sworn to before me this 21 day of  
November, 2011

Eric B. Chaikin

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014



BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF Frank Fabris

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 1 years and was so employed for the years 2007/2008/2009/2010/2011.
2. My work hours during the time period between 2007 and 2011 were:  
Days: Mon - Fri Hours: 8-4 (40)
3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

Checking Magnacare reporting accuracy, requesting

information from patients and providers, Writing letters  
requesting said information, printing checks.

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 35 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.
5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.
6. ~~I was not~~ (I was) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

Frank Fabris

Name

Frank Fabris

Sworn to before me this 21 day of

November, 2011.

Eric B. Chaikin

Notary Public

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF DIANE BACCARI

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 11 years and was so employed for the years 2007/2008/2009/2010/2011.

2. My work hours during the time period between 2007 and 2011 were:

Days: Tuesday & Wednesday Hours: 16

3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

Answer phones, eligibility, filing claims, checking status of claims

checking claims for magnacare providers

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 16 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.
5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.
6. I was not (~~I was~~) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

Diana Baccari

Name

Sworn to before me this 22 day of November, 2011-

Eric B. Chaikin

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014

## BEFORE THE

## NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer Case No. 29 CA 29656

(United Plant &amp; Production Workers, Local 175),

Union.

STATEMENT OF Elaine Kuper

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 18 years and was so employed for the years

2007/2008/2009/2010/2011.

2. My work hours during the time period between 2007 and 2011 were:

Days: 5, Mon - Fri Hours: 8am - 4pm

3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

Claims Adjustment, phone calls regarding Magna Care

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 40 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.
5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.
6. ~~I was~~ not (I was) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.



Name

Sworn to before me this 21 day ofNovember, <sup>2011</sup>~~2010~~ <sub>KMB</sub>Notary Public Kristen M. Beals Notary-KRISTEN M. BEALS, Notary Public  
My Commission Expires September 22, 2015

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF Donna Crescenzo

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 12 years and was so employed for the years 2007/2008/2009/2010/2011.
2. My work hours during the time period between 2007 and 2011 were:  
Days: Monday - Friday Hours: 3.5 hrs.
3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

Answering calls, handling complaints/problems related to payment/claim status,  
check coding, copay, providers for accuracy, obtain necessary  
information to confirm eligibility, hours/wages, processing  
claims for payment and release of checks/mailling

All phases of claims processing were conducted during course  
of 7 hour day including processing of Out-of-Network claims.

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific <sup>medicare</sup> functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 35 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.
5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.
6. I was not (~~have~~) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

Donna Crescenzo

Name Donna Crescenzo

Sworn to before me this 22 day of November, 2011.

Eric B. Chaikin

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014



BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF Carmelma faraci

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 10 years and was so employed for the years 2007/2008/2009/2010/2011.

*Please see request for full-time that my employer has not responded to.*

2. My work hours during the time period between 2007 and 2011 were:  
 From 2002 - 2006 5 days at 40 hours through 8/2006  
 Days: 2 Hours: 16 currently  
 8/2006 - 12/2006 on disability  
 12/2006 - 4/2007 on maternity  
 5/2007 - 6/2007 5 days 40 hrs.  
 7/2007 - 2/2008 2 days 16 hrs.  
 3/2008 - 7/2008 maternity leave  
 8/2008 - 2011 2 days 16 hrs. with a request for full-time
3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: (examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

I answered calls regarding claims, entered claims for magnacare updated claims ~~at~~ including but not limited to corrected coding requested information from the provider or participant verified eligibility of claims corrected provider information mailed checks folded checks ~~claims~~ started, filed contacted doctors and or participants helped printing checks and copies. Answered calls from providers and participants regarding claims received and printed for status and eligibility. Contacted magnacare for any questions on pricing when necessary.

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 16 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.

Out of my 16 hour work week in 2007/2008

5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.

6. ~~I was not~~ (I was) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity. I have been able and willing to work full-time but the work opportunity was taken away from me in January 2009 and still has not been awarded to me.

Celia Ferri

Name Carmelina Faraci

Sworn to before me this 22 day of November, 2011.

Eric B. Chaikin

ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014

September 28, 2011

Joeseeph Montelle, Administrator  
Pavers District Council Benefit Funds

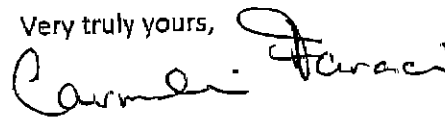
Dear Mr. Montelle,

Pursuant to your request that I place this request in writing I am formally requesting what I have advised you previously that I am ready, willing and able to work full time for the Pavers and Road Builders District Council Welfare Fund.

I currently work two days a week and have worked additional hours as you have offered them to me. I am available to work regular, full time hours during the week and would appreciate being considered at this time for such a position. You are fully aware of my ability to perform the work involved. I am trained, and have performed, the work in the various Fund departments.

Thank you for your consideration of my request.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'Carmelina Faraci', written in dark ink.

Carmelina Faraci

Cc: Trustees of the Pavers and Road Builders Welfare Fund

BEFORE THE  
NATIONAL LABOR RELATIONS BOARD

IN RE: Pavers and Road Builders District Council Funds,

Employer

Case No. 29 CA 29656

(United Plant & Production Workers, Local 175),

Union.

STATEMENT OF MARIO BRICENO

I am currently employed by the Pavers and Road Builders District Council Welfare Fund and have been so employed during the relevant time periods concerning the above cited Case. I make this Statement knowing that the facts set forth herein must be truthful and will be relied upon by the National Labor Relations Board in its evaluation of the appropriate "Make Whole Remedy" that should be applied and determined in this case.

1. I have been employed by the Employer for 11 years and was so employed for the years 2007/2008/2009/2010/2011.
2. My work hours during the time period between 2007 and 2011 were:  
Days: 5 Hours: 40
3. My job duties included working on Magna Care related claims. The specific function I performed related to Magna Care claims included but were not limited to: *(examples of such work are answering phone calls related to claims, handling complaints regarding denials of claims, checking the claims, checking coding of services, checking co-pay, taking action to obtain needed information, taking action to correct errors, contacting doctors, providers, Magna Care for information, and obtaining information from participants to verify eligibility, hours, wages, mailings; preparing mailings, preparing checks, mailing checks, performing reconciliations of checks and financial information re claims).*

I performed the following specific functions regarding Magna Care work in 2007/2008 which functions were taken from me effective January 1, 2009 when the work was subcontracted out to Magna Care:

ANSWERED MEMBERS QUESTIONS AT THE WINDOW ESPECIALLY ANY MEMBER THAT SPOKE SPANISH OR PORTUGUESE ON THE PHONE. ALSO QUESTIONS PERTAINING TO CO-PAYS, CLAIMS, NOT PAID, REQUEST FOR EXPLANATION OF INJURIES IN AND OUT OF NETWORK INFORMATION, ALSO WHEN MEMBERS FELL OUT OF BENEFIT AND THEY COULDN GO TO DOCTORS, ENTERING HOURS BY PAYSTUBS OR CALLING EMPLOYERS FOR HOURS SO THEY WERE IN BENEFIT AND COULD GO TO DOCTORS.

4. The number of hours/minutes each week that I spent in 2007/2008 performing the specific functions I have set forth in answer to question number 3 above related to work I did on Magna Care claims that was taken from me effective 1/1/09 were approximately 15 hours each week. Thus, I believe I am entitled to be awarded "Back Pay" and allowed to participate in the make whole remedy directed by the National Labor Relations Board.
5. I am advised that the old Local 450-A collective agreement required that my employer make contributions on my behalf to the Pension and Medical Funds for all hours worked, including overtime hours; and that contributions made to the Annuity Fund were required to be made at the rate of 1.5 for all hours over 40 as well. At no time was I aware that the Employer failed to make said contribution as required by the collective agreement and at no time was I aware that the employer claimed that there was a "past practice" under that agreement allowing them to only make contributions for the first 40 hours of work. The actions of the Employer in regard to the contributions only being made on hours up to 40 in a work week were solely unilateral and never known by or agreed to by me.
6. I was not (I was) specifically interviewed by Region 29 representatives during their investigation to determine the appropriate make whole remedy. I would request the opportunity to be heard on this subject and I believe I am entitled to be compensated for the lost work and earning opportunity.

  
Name MARIO BRICEÑO

Sworn to before me this 22<sup>d</sup> day of November, 2011.



ERIC B. CHAIKIN  
Notary Public, State of New York  
No. 02CH4635668  
Qualified in Suffolk County  
Term Expires Nov. 30, 2014